IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 3336 OF 2004

Prakash Laxman Kamble & another... Petitioners

versus

Laxman Dadu Kamble & ors..... Respondent.

Shri S.S. Patwardhan for he petitioner
Shri N.J.Patil for the respondent.

CORAM; A.P. DESHPANDE, J.
DATED; 11TH SEPTEMBER, 2007

P.C.;

1. Rule. Rule made returnable forthwith. Taken up for final hearing by consent of parties.

2. The present petitioners are original plaintiffs, who filed a Special Civil Suit in the Court of Civil Judge, Senior Division, Sangli and after the court was established at Islampur, the suit came to be transferred to the Court at Islampur and re-numbered as Special Civil Suit No. 439/99. The suit filed by the petitioner was for partition and separate possession of their share in the ancestral joint family property. Respondent no.12 is the wife of respondent no.1. In the said suit, respondent nos. 1 and 12, the defendants before the trial court, moved

an application for impleading their three children as party defendants by contending that right of the children would be affected. Said application was rejected and thereafter the said three children of defendant nos. 1 and 12 moved an application for their impleadment as party defendants in the suit. It is undisputed position that the third party applicants viz. the children of defendants 1 and 12 are illegitimate children. In view of the fact that the applicants before the trial court are illegitimate children, the plaintiff opposed the application by contending that illegitimate children do not have any legal right in the coparsnery property, though they have a right in the property of their parents. Hence the plaintiff urged the court to reject the application by further pointing out that the plaintiffs are the dominuslities and hence have a choice to implead the defendants. The trial court placing reliance on a judgment reported in **BLR 1987 page 488 in case of Raghunath Vs.Nana Rama Patil,** has allowed the application and aggreived thereby the present writ petition has been filed.

3. The trial court has concluded that illegitimate children are equated with legitimate children by virtue of section 16 of the Hindu Marriage Act, and they have a right in the joint family property and

hence the application has been allowed directing the plaintiff to implead the third party.

4. The question that falls for consideration is as to whether illegitimate children can claim as of right any share in the joint Hindu Family Property, and if the answer to the said question is in the affirmative, then and then alone, the application for impleadment moved by illegitimate children of defendant nos. 1 and 12 can be allowed and not otherwise.

5. The learned counsel for the petitioner has placed reliance on judgments of Bombay High Court and Supreme Court, dealing with the issue. I will only deal with few of those judgments which goes to take a consistent view that illegitimate children cannot claim any right in the joint family property. A Division Bench of this court in a judgment reported in 1987 M.L.J.page 179 has held, after analysing section 16 of the Hindu Marriage Act, in the backdrop of section 3(1)(j) of Hindu Sucession act that a illegitimate child does not acquire right to the property which a legitimate child would acquire. The legitimacy only confers upon ilegitimate child right to the property of his parents and the said property has to be a separate property of the parents and not coparsnery property in which the parents have a share.

6. The judgment relied upon by the trial court in case of Raghunath Vs. Nana Patil taking contrary view has been held to be not laying down a correct legal position and thus the view has been overruled by the Division Bench in the judgment reported in **1987 M.L.J. page 179**.

7. In a judgment reported in 2006 (9) SCC 612, the Supreme Court has held that a ilegitimate child cannot claim as of right any share in the joint Hindu Family property but is entitled to a share in the property exclusively owned by the parents. Thus the position that emerges is that the third party applicants cannot claim any legal right in the joint family property and thus cannot be termed as necessary or proper party.

8. The next judgment on which reliance is placed by the learned counsel for the petitioner is reported in 1992(2) SCC 524, to contend that only a necessary or a proper party could be directed to be impleaded in a suit and a necessary or a proper party would be one which has a direct or legal interest in the litigation. As the illegitiamte childrn do not have any legal interest in the joint family property they cannot be said to be necessary or proper party.

9. In this view of the matter, the trial court should have rejected the application moved by illegitimate children under Order 1 Rule 10. The trial court has eroneously placed reliance on a judgment rendered by the learned Single Judge of this court which view has been overruled by Division Bernch in the susbsequent judgment. In the result the writ petition is allowed. Impugned order is quashed and set aside. Rule made absolute in the above terms.

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